IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:	§	Attorney Docket No. PC861.00/31132.118
	§	
Berry et al.	§	Customer No. 46333
	§	
Serial No. 10/691,256	§	Group Art Unit: 3738
	§	
Filed: October 22, 2003	§	Examiner: Stewart, Alvin J.
	§	
For: Vertebral Body Replacement Implant	§	Confirmation No. 5450

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Gayle Conner

Gayle Conner

APPEAL BRIEF

In response to the Notification of Non-Compliant Appeal Brief dated January 11, 2007, Appellants submit this revised Appeal Brief. At the Examiner's request claims 64 and 55 have been canceled. This Appeal Brief is submitted in connection with an appeal from the Final Office Action dated May 4, 2006 rejecting claims 24-26, 29, 31-34, 40-44, 46-53, 62, and 65-67 in the above-identified application.

TABLE OF CONTENTS

REAL PARTY IN INTEREST

The real party in interest is Warsaw Orthopedic, Inc., an American company having a principal office and place of business at 2500 Silveus Crossing, Warsaw, Indiana 46581. Warsaw Orthopedic, Inc. is the successor of SDGI Holdings, Inc.

RELATED APPEALS AND INTERFERENCES

There are no related appeals and no related interferences regarding the above-identified patent application.

STATUS OF CLAIMS

Claims 24-34, 40-44, 46-53, 55, and 62-67 were pending and under consideration in the above-identified application. Claims 24-26, 29, 31-34, 40-44, 46-53, 62, and 65-67 were rejected. Claims 27, 28, 30, and 63 were objected to as being dependent upon a rejected base claim, but were indicated as being allowable if rewritten in independent form.

STATUS OF AMENDMENTS

No amendments have been made after the Final Office Action dated May 4, 2006.

SUMMARY OF CLAIMED SUBJECT MATTER

To further clarify the summary of the claimed subject matter, at least some representative portions of the specification and drawings related to the respective claim elements are set forth parenthetically below. However, there may be further portions of the specification and/or drawings that are also relevant to the claimed subject matter.

The present invention—as set forth in **independent claim 24**—relates to a vertebral replacement implant (Figs. 2-5, reference numerals 20 and 20′; paragraphs [0016]-[0030] and [0040]-[0044]) for interposition in a space left by one or more removed vertebrae between adjacent intact vertebrae, comprising:

a tubular body (Figs. 2-5, reference numeral 22; paragraphs [0016]-[0019], [0023], and [0040]) having opposite ends and sized to span at least a portion of the space between the intact vertebrae;

a pair of endplate assemblies (Figs. 2-7b, reference numerals 24, 24′, 24″, and 26; paragraphs [0020], [0022]-[0024], [0026], [0030], [0031], [0034], [0035], [0037], and [0040]), attached to each of the opposite ends of the body, each of the endplate assemblies having an end surface and a tubular portion defining a bore therethrough extending through the end surface; and

a basket (Figs. 6a-7b, reference numerals 96 and118; paragraphs [0031]-[0037] and [0045]-[0048]) comprising a tubular wall bounded by a base, the wall and base defining a cavity (Fig. 6a, reference numeral 102), wherein the basket is adapted to be disposed within at least one of the bores.

In another embodiment, the present invention—as set forth in **independent claim 40**—relates to a graft containment device (Figs. 6a-7b, reference numerals 96 and118; paragraphs [0031]-[0037] and [0045]-[0048]) for use with a vertebral implant corpectomy device having an internal cavity, the graft containment device comprising:

a sidewall (Figs. 6a and 7a, reference numeral 98) circumscribing a base (Figs. 6a and 7a, reference numeral 100);

an open end opposite the base; and

an engagement device (Figs. 6a and 7a, reference numerals 112 and 122) for maintaining the graft containment device within the cavity of the corpectomy device vertebral implant.

In another embodiment, the present invention—as set forth in **independent claim 46**—relates to a tubular vertebral implant device (Figs. 2-5, reference numerals 20 and 20′; paragraphs [0016]-[0030] and [0040]-[0044]) for interposition between two vertebral endplates, the tubular vertebral implant device comprising:

an expandable tubular assembly (Figs. 2-5, reference numerals 20 and 20′; paragraphs [0016]-[0030] and [0040]-[0044]) having a sidewall; and

a graft containment device (Figs. 6a-7b, reference numerals 96 and118; paragraphs [0031]-[0037] and [0045]-[0048]), comprising an open end (Fig. 6a, reference numeral 102) and a perforated base plate (Figs. 6a and 7a, reference numeral 100) opposite the open end, disposed in at least one end of the tubular assembly.

In another embodiment, the present invention—as set forth in **independent claim 65**—relates to a vertebral implant (Figs. 2-5, reference numerals 20 and 20′; paragraphs [0016]-[0030] and [0040]-[0044]) adapted to extend between a pair of vertebrae in a spinal column vertebral endplates, the vertebral implant comprising:

a first tubular implant (Figs. 2-5, reference numeral 22; paragraphs [0016]-[0019], [0023], and [0040]) member having a longitudinal axis extending substantially parallel to the spinal column;

a first endplate member (Figs. 2-7b, reference numerals 24, 24′, 24″, and 26; paragraphs [0020], [0022]-[0024], [0026], [0030], [0031], [0034], [0035], [0037], and [0040]) connected to the first tubular implant member, the first endplate member comprising a through bore; and

a tubular receptacle (Figs. 6a-7b, reference numerals 96 and118; paragraphs [0031]-[0037] and [0045]-[0048]) member sized to extend into the through bore, the tubular receptacle member bounded at one end by a perforated base (Figs. 6a and 7a, reference numeral 100) to form a cavity (Fig. 6a, reference numeral 102) adapted to receive graft material.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

I. Claims 24-26, 29, 31-34, 40-43, 46-53, 62, 65, and 66 stand rejected under 35 U.S.C. §102(b) as being anticipated by Schafer (2004/0172129).

II. Claims 40-44, 65, and 67 stand rejected under 35 U.S.C. §102(b) as being anticipated by Malone (2002/0169507).

III. Claims 46-53 stand rejected under 35 U.S.C. §102(b) as being anticipated by Kojimoto (5,290,312).

ARGUMENT

The issues for the Board's consideration are as follows:

I. Whether claims 24-26, 29, 31-34, 40-43, 46-53, 62, 65, and 66 are patentable over Schafer (2004/0172129).

II. Whether claims 40-44, 65, and 67 are patentable over Malone (2002/0169507).

III. Whether claims 46-53 are patentable over Kojimoto (5,290,312).

As detailed below, the Appellants assert that the cited references are insufficient to sustain a prima facie rejection of the claimed subject matter. More specifically, it is Appellants' belief that each of the references fails to teach every element recited in the corresponding claims and, therefore, cannot anticipate the claims.

Rejections under §102(b) over Schafer (2004/0172129)

Claims 24-26, 29, 31-34, 40-43, 46-53, 62, 65, and 66 stand rejected under 35 U.S.C. §102(b) as being anticipated by Schafer (2004/0172129). However, these rejections have clear legal deficiencies because Schafer lacks essential elements needed to establish a prima facie rejection based on anticipation.

As a preliminary matter, the Final Office Action summarily rejected all of the above claims over Schafer solely with the following statement:

> "Schafer et al discloses intervertebral implant comprising a first tubular body (34, 18, & 36), a plurality of end plates (16 &14) having an end surface and a tubular portion and a basket (42). The basket, the endplates and the tubular body are capable of receiving graft material between the holes (see paragraphs 16 and 39)."

This is the full extent of the rejection and is identical to the rejection set forth in the earlier, non-final Office Action. No further clarification of how the device in Schafer corresponds to the different elements of the claims was provided.

It is possible that the Examiner misinterpreted the specification of Schafer, particularly Fig. 9 shown below, to disclose a solid base plate associated with locking element 42. However, as clearly set forth in Schafer "the locking element [42] is also designed in the form of a sleeve

and has, on its surface lying oppositely detents 60, a radially projecting retention flange 64 ...." ¶ [0041].

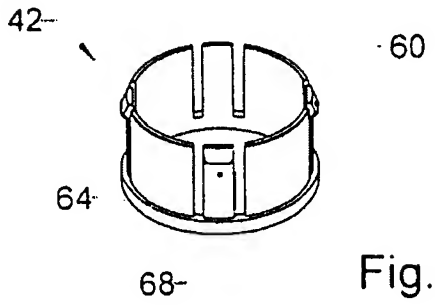


Fig. 9

Thus, the locking element 42 is a tubular member with two open ends and no base plate. As a result and set forth more fully below, Schafer fails to teach numerous structural limitations within each of the independent claims. Thus, for at least these reasons the Examiner has failed to establish a prima facie rejection of these claims based on Schafer.

Each of the independent claims will now be discussed in further detail to illustrate further deficiencies in the rejections.

Independent Claim 24

Independent claim 24 stands rejected under 35 U.S.C. §102(b) as being anticipated by Schafer (2004/0172129). The PTO specifies in MPEP §2131 that, to anticipate a claim, a reference must teach "each and every element as set forth in the claim." However, with respect to independent claim 24 Schafer clearly does not disclose "a basket comprising a tubular wall bounded by a base, the wall and base defining a cavity," as recited.

Reproduced below are exemplary embodiments of "a basket comprising a tubular wall bounded by a base, the wall and base defining a cavity" as shown in Figures 6a and 7a of the current application.

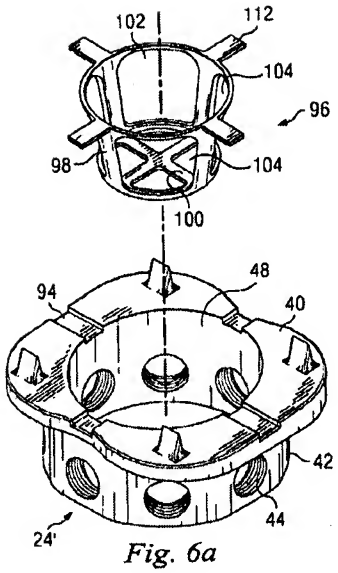


Fig. 6a

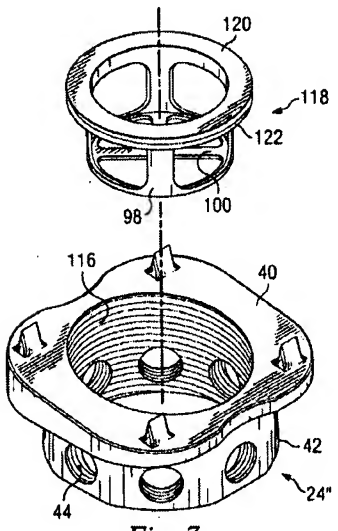


Fig. 7a

The corresponding portions of the detailed description describe the exemplary baskets as follows:

> "The graft basket 96 is formed by a cylindrical wall 98 and a base 100 which define a cavity 102 suitable for receiving graft material (not shown). The cylindrical wall 98 need not be perfectly cylindrical but rather may be tapered or angled. The wall 98 and the base 100 are provided with a plurality of apertures 104 suitable to promote tissue ingrowth and vascularization." (¶ [0032])
>
> "[A] graft basket 118 [] is similar to the basket 96 of the previous embodiment and includes identical components of the latter basket which are given the same reference numerals." (¶ [0035])

The Final Office Action pointed to the locking element 42 in Schafer as being the equivalent to the basket of claim 24. As seen best in Figures 3 and 9 of Schafer (reproduced below), the locking element 42 is clearly not a basket within any reasonably accepted meaning of the term. The locking element 42 appears to be simply a cylindrical tube with a continuous bore therethrough. The locking element 42 would be unable to hold anything, in contrast to a basket as recited in claim 24.

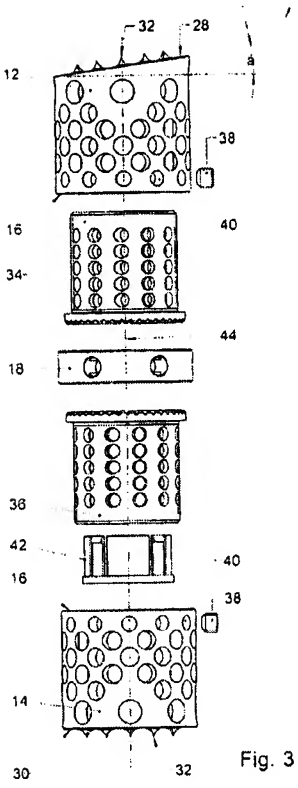


Fig. 3

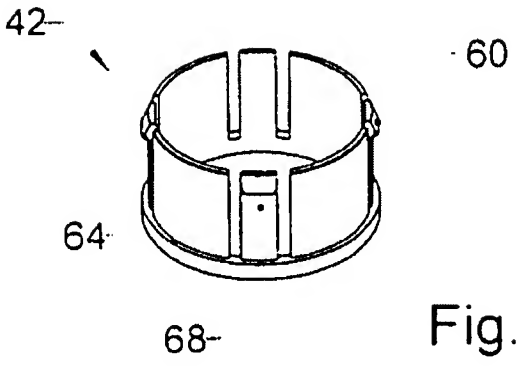


Fig. 9

Further, the locking element 42 clearly does not teach the additionally claimed structural limitations of the basket: "a tubular wall bounded by a base, the wall and base defining a cavity." Rather, the flange 64 extends radially around the perimeter of the wall and in no way defines a cavity as expressly required by claim 24.

There is clear error in considering the locking element 42 of Schafer sufficient to anticipate the basket with the structural limitations recited in independent claim 24. Claims 25, 26, 29, 31-34, 62, and 63 depend from and further limit claim 24. Applicants have therefore shown clear legal deficiency in the §102(b) rejection of claims 24-26, 29, 31-34, 62, and 63 over Schafer. Consequently, these rejections are clearly not proper and should be withdrawn.

Independent Claim 40

Independent claim 40 also stands rejected under 35 U.S.C. §102(b) as being anticipated by Schafer (2004/0172129). As noted above, the PTO specifies in MPEP §2131 that, to anticipate a claim, a reference must teach "each and every element as set forth in the claim." However, with respect to independent claim 40 Schafer does not disclose "a sidewall circumscribing a base; an open end opposite the base," as recited.

The Final Office Action apparently points to the locking element 42 in Schafer as being equivalent to this element of claim 40. As seen best in Fig. 9 of Schafer (reproduced below), the locking element 42 clearly does not teach "a sidewall circumscribing a base; an open end opposite the base."

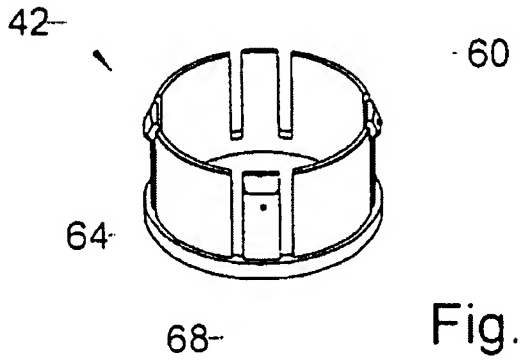


Fig. 9

As shown above, there is no base for the sidewall to circumscribe. Rather, Schafer discloses a flange 64 extending radially outward from a sidewall. Thus, the required base element is completely lacking from Schafer. Further, since the flange 64 extends outwardly from the sidewall, even if the flange is considered to be a base the sidewall does not circumscribe it as expressly required by claim 40. Further, even if the flange 64 is considered to be a base the locking element 42 does not have an open end opposite the base. Rather, the open end is necessarily within the sidewall and therefore not opposite the flange 64. Locking element 42 has an open end opposite another open end, not opposite a base. In summary, the locking element 42 simply does not have a sidewall circumscribing a base, nor an open end opposite the base as expressly required by claim 40.

There is clear error in considering the locking element 42 of Schafer sufficient to anticipate the structure recited in independent claim 40. Claims 41-43 depend from and further limit claim 40. Applicants have therefore shown clear legal deficiency in the §102(b) rejection of claims 40-43 over Schafer. Consequently, these rejections are clearly not proper and should be withdrawn.

Independent Claim 46

Independent claim 46 also stands rejected under 35 U.S.C. §102(b) as being anticipated by Schafer (2004/0172129). As noted above, the PTO specifies in MPEP §2131 that, to

anticipate a claim, a reference must teach "each and every element as set forth in the claim." However, with respect to independent claim 46 Schafer does not disclose "a graft containment device, comprising an open end and a perforated base plate opposite the open end, disposed in at least one end of the tubular assembly," as recited.

The Final Office Action pointed to the locking element 42 in Schafer as being the equivalent to this element of claim 46. However, as seen best in Fig. 9 of Schafer (reproduced below), the locking element 42 clearly does not teach "an open end and a perforated base plate opposite the open end."

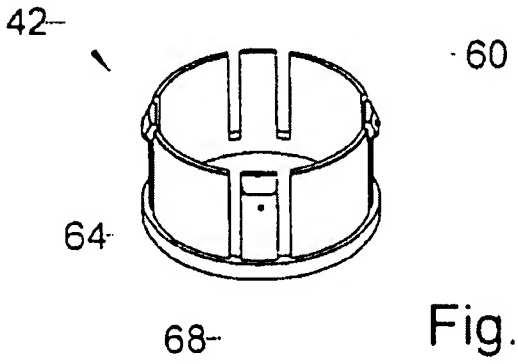


Fig. 9

As shown above, there is no perforated base plate. Rather, Schafer discloses a flange 64 extending radially outward from a sidewall. Thus, the required perforated base plate element is completely lacking from Schafer. Further, since the flange 64 extends outwardly from the sidewall, even if the flange is considered to be a base the sidewall does not circumscribe it as expressly required by claim 46. Further, even if the flange 64 is considered to be a base the locking element 42 does not have an open end opposite the base. Rather, the open end is necessarily within the sidewall and therefore not opposite the flange 64. Locking element 42 has an open end opposite another open end, not opposite a base.

Further, as noted above the flange 64 extends outwardly from the sidewall in circumscribing the sidewall. Thus, the locking element 42 does not have an open end opposite a base, let alone the perforated base plate as required by claim 46. Rather, the locking element 42 has an open end opposite another open end. Therefore, for this additional reason the locking element 42 does not have a perforated base plate opposite an open end as expressly required by claim 46.

Finally, the locking element 42 is not "disposed in at least one end of the tubular assembly" as required by claim 46. Rather, the locking element 42 is positioned so that "the two inner sleeves 34 and 36 can be attached to each other." Thus, locking element 42 must necessarily be disposed in the middle of the implant 10 to attach sleeves 34 and 36, as shown in Figures 2 and 3 below, and not be disposed in at least one end of the device.

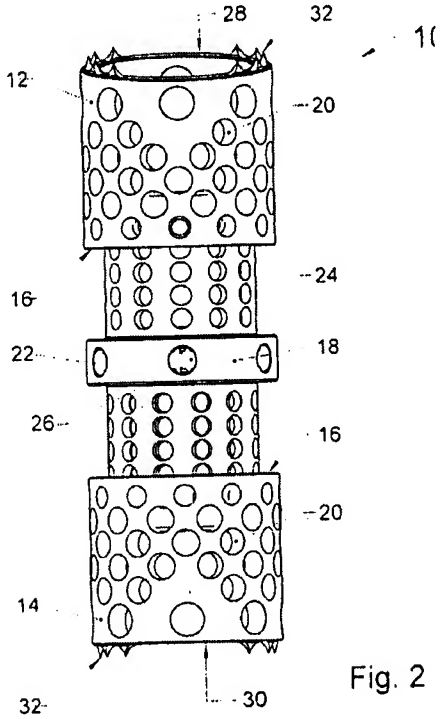


Fig. 2

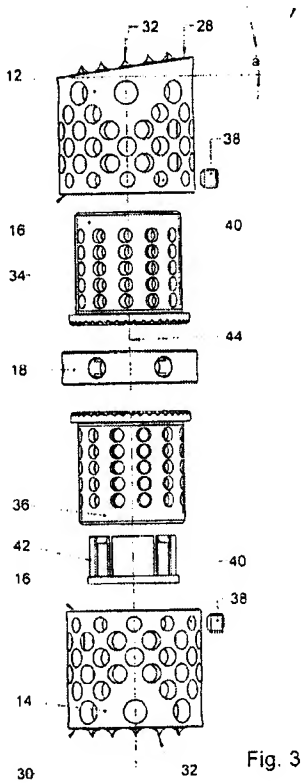


Fig. 3

Thus, for at least these reasons there is clear error in considering the locking element 42 of Schafer sufficient to anticipate the structure recited in independent claim 46. Claims 47-53 depend from and further limit claim 46. Applicants have therefore shown clear legal deficiency in the §102(b) rejection of claims 46-53 over Schafer. Consequently, these rejections are clearly not proper and should be withdrawn.

Independent Claim 65

Independent claim 65 also stands rejected under 35 U.S.C. §102(b) as being anticipated by Schafer (2004/0172129). As noted above, the PTO specifies in MPEP §2131 that, to anticipate a claim, a reference must teach "each and every element as set forth in the claim." However, with respect to independent claim 65 Schafer does not disclose "a tubular receptacle

member ..., the tubular receptacle member bounded at one end by a perforated base to form a cavity adapted to receive graft material," as recited.

The Final Office Action pointed to the locking element 42 in Schafer as being the equivalent to this element of claim 65. However, as seen best in Fig. 9 of Schafer (reproduced below), the locking element 42 clearly does not teach "the tubular receptacle member bounded at one end by a perforated base to form a cavity."

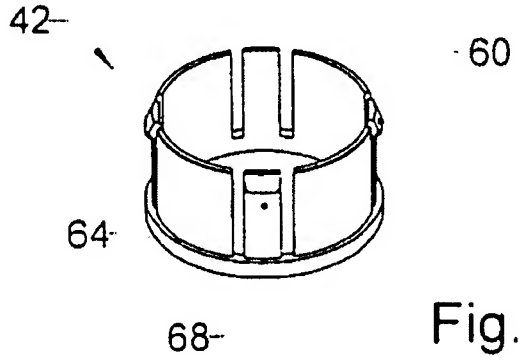


Fig. 9

As shown above, rather than the claimed base, Schafer discloses a flange 64 extending radially outward from a sidewall. Since the flange 64 extends outwardly from the sidewall in circumscribing the sidewall, the locking element 42 does not have a tubular receptacle member bounded by a perforated base to form a cavity. Thus, the required perforated base and cavity elements are completely lacking from Schafer.

There is clear error in considering the locking element 42 of Schafer sufficient to anticipate the structure recited in independent claim 65. Claims 66 and 67 depend from and further limit claim 65. Applicants have therefore shown clear legal deficiency in the §102(b) rejection of claims 65-67 over Schafer. Consequently, these rejections are clearly not proper and should be withdrawn.

Rejections under §102(b) over Malone (2002/0169507)

Claims 40-44, 65, and 67 stand rejected under 35 U.S.C. §102(b) as being anticipated by Malone (2002/0169507). However, these rejections have clear legal deficiencies because Malone lacks essential elements needed to establish a prima facie rejection based on anticipation.

Independent Claim 40

Independent claim 40 stands rejected under 35 U.S.C. §102(b) as being anticipated by Malone (2002/0169507). The PTO specifies in MPEP §2131 that, to anticipate a claim, a reference must teach "each and every element as set forth in the claim." However, with respect to independent claim 40 Malone does not disclose "an engagement device for maintaining the graft containment device within the cavity of the corpectomy device." Simply put, Malone does not teach a graft containment device for use with a corpectomy device. Thus, there is no disclosure of the claimed "engagement device" to hold the graft container within a corpectomy implant. Rather, Malone involves the use of interbody spinal fusion cages only, not corpectomy devices, as shown in Figure 1 below.

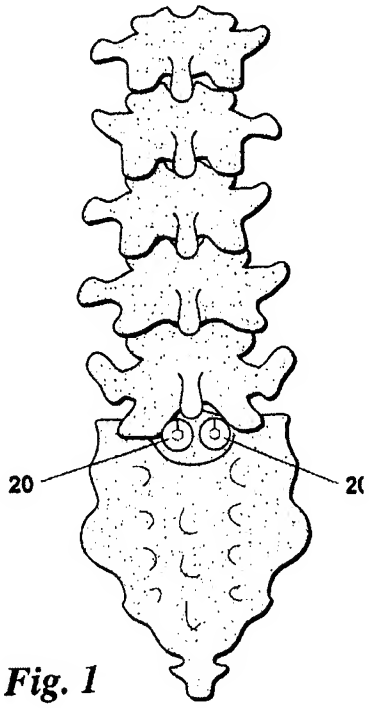


Fig. 1

There is clear error in considering the interbody cages of Malone as sufficient to teach the use of a graft containment device in combination with a corpectomy device as required by claim 40. Claims 41-44 depend from and further limit claim 40. Applicants have therefore shown clear legal deficiency in the rejection of claims 40-44. Consequently, these rejections are clearly not proper and should be withdrawn.

Independent Claim 65

Independent claim 65 stands rejected under 35 U.S.C. §102(b) as being anticipated by Malone (2002/0169507). As noted above, the PTO specifies in MPEP §2131 that, to anticipate a

claim, a reference must teach "each and every element as set forth in the claim." However, with respect to independent claim 65 Malone does not disclose "a tubular receptacle member ..., the tubular receptacle member bounded at one end by a perforated base to form a cavity." Malone simply does not disclose tubular member bounded by a perforated base. Rather, as shown below the end cap 48 and 146 have substantially solid end portions 52 and 152. Each of the end portions 52 and 152 include "a recess 50 [and 162] for receiving an insertion tool." However, the end caps 48 and 146 are not perforated as explicitly required by claim 65.

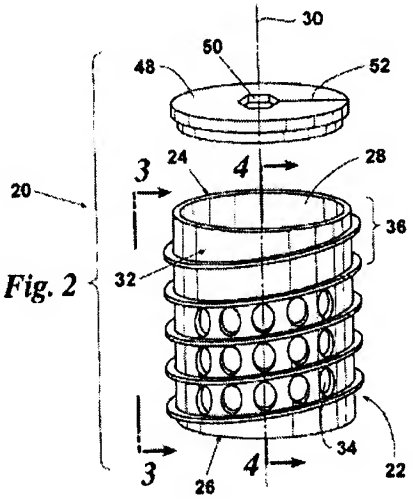


Fig. 2

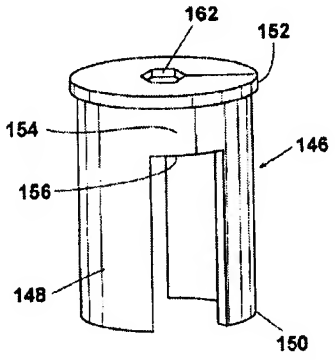


Fig. 7

Further, Malone does not disclose "a first tubular implant member having a longitudinal axis extending substantially parallel to the spinal column." Rather, the longitudinal axis 30 in Malone extends substantially perpendicular to the spinal column, as shown in Fig. 1 of Malone. Thus, for at least these reasons there is clear error in relying on Malone to teach the claimed elements of claim 65. Claim 67 depends from and further limits claim 65. Applicants have therefore shown clear legal deficiency in the rejection of claims 65 and 67. Consequently, these rejections are clearly not proper and should be withdrawn.

Rejections under §102(b) over Kojimoto (5,290,312)

Claims 46-53 stand rejected under 35 U.S.C. §102(b) as being anticipated by Kojimoto (5,290,312). However, these rejections have clear legal deficiencies because Kojimoto lacks essential elements needed to establish a prima facie rejection based on anticipation.

Independent Claim 46

Independent claim 46 stands rejected under 35 U.S.C. §102(b) as being anticipated by Kojimoto (5,290,312). The PTO specifies in MPEP §2131 that, to anticipate a claim, a reference must teach "each and every element as set forth in the claim." However, with respect to independent claim 46 Kojimoto simply fails to disclose "an expandable tubular assembly having a sidewall; and a graft containment device," as recited by claim 46. The Office Action makes no relation between each claimed structural element and the features of the cited reference. Rather, depending on how one characterizes the components of the Kojimoto reference, Kojimoto discloses either an expandable assembly and no graft containment device, or a graft containment device and no expandable assembly. Kojimoto simply fails to teach an expandable tubular assembly and a graft containment device. As illustrated below, Kojimoto discloses only two components 18 and 20.

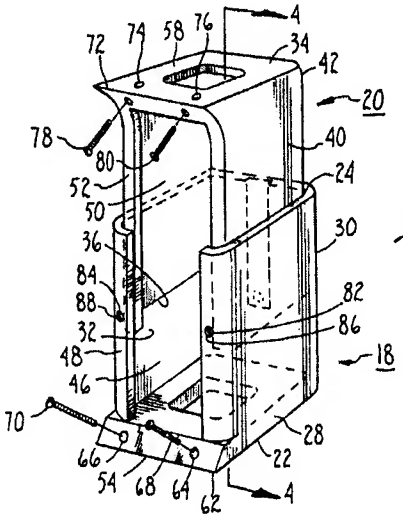


Fig. 3

If component 18 of Kojimoto is considered a graft containment device as asserted by the Final Office Action, then there cannot be an expandable tubular assembly because component 20, taken alone, is clearly not expandable. Similarly, if the two components 18, 20 are considered together to be an expandable assembly, then there cannot be a graft containment

device because there are no other components. Thus, Kojimoto cannot teach an expandable tubular assembly and a graft containment device as recited in claim 46.

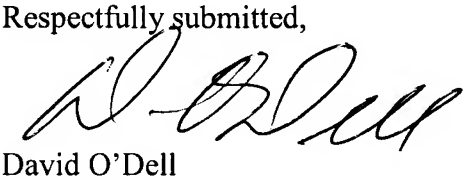
There is clear error in considering the components 18 and 20 of Kojimoto as sufficient to teach an expandable tubular assembly and a graft containment device, as required by claim 46. Claims 47-53 depend from and further limit claim 46. Applicants have therefore shown clear legal deficiency in the rejection of claims 46-53. Consequently, these rejections are clearly not proper and should be withdrawn.

Conclusion

Accordingly, it is respectfully submitted that each of the cited references fails to each every element of the claimed subject matter in independent claims 24, 40, 46, 64, and 65. For at least the same reasons, each of the cited references fails to teach every element of the claimed subject matter in dependent claims 25-34, 41-44, 47-53, 55, 62, 63, 66, and 67.

For all of the foregoing reasons, it is respectfully submitted that all pending claims 24-34, 40-44, 46-53, 55, and 62-67 be allowed. A prompt notice of allowance is respectfully requested.

Respectfully submitted,



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CLAIMS APPENDIX

1-23. (Cancelled)

24. A vertebral replacement implant for interposition in a space left by one or more removed vertebrae between adjacent intact vertebrae, comprising:

a tubular body having opposite ends and sized to span at least a portion of the space between the intact vertebrae;

a pair of endplate assemblies attached to each of the opposite ends of the body, each of the endplate assemblies having an end surface and a tubular portion defining a bore therethrough extending through the end surface; and

a basket comprising a tubular wall bounded by a base, the wall and base defining a cavity, wherein the basket is adapted to be disposed within at least one of the bores.

25. The vertebral replacement implant according to claim 24 wherein the cavity is suitable for receiving graft material.

26. The vertebral replacement implant according to claim 24 wherein the basket extends into the tubular body.

27. The vertebral replacement implant according to claim 24

wherein the basket includes at least one positioning tab; and

wherein the end surface includes at least one positioning recess configured to engage the at least one positioning tab.

28. The vertebral replacement implant according to claim 24

wherein the tubular portion has first threads defined thereon; and

wherein the basket has second threads thereon configured to threadedly engage the first threads on the cylindrical portion.

29. The vertebral replacement implant according to claim 24

wherein the basket includes one or more apertures.

30. The vertebral replacement implant according to claim 29 wherein the apertures extend over more than 50% of the basket.

31. The vertebral replacement implant according to claim 24, wherein the tubular body includes a wall defining a hollow interior, the wall further defining a plurality of openings therethrough, the openings being in communication with the hollow interior.

32. The vertebral replacement implant according to claim 31, wherein the openings are sized to allow a graft material entry into the hollow interior.

33. The vertebral replacement implant according to claim 31, wherein after the interposition in the space left by one or more vertebrae, at least one of the openings is accessible.

34. The vertebral replacement implant according to claim 31,

wherein the basket includes one or more apertures; and

wherein the openings are sized to provide a line of sight through the openings, through the hollow interior, through the one or more apertures, and into the cavity of the basket.

35 - 39. (Cancelled)

40. A graft containment device for use with a vertebral implant corpectomy device having an internal cavity, the graft containment device comprising:

a sidewall circumscribing a base;

an open end opposite the base; and

an engagement device for maintaining the graft containment device within the cavity of the corpectomy device vertebral implant.

41. The graft containment device of claim 40 wherein the engagement device suspends the graft containment device within the cavity of the corpectomy device vertebral implant.

42. The graft containment device of claim 40 wherein the engagement device comprises at least one tab.

43. The graft containment device of claim 40 wherein the engagement device comprises a flange integrated with the sidewall.

44. The graft containment device of claim 40 wherein engagement device comprises external threads.

45. (Cancelled)

46. A tubular vertebral implant device for interposition between two vertebral endplates, the tubular vertebral implant device comprising:
an expandable tubular assembly having a sidewall; and
a graft containment device, comprising an open end and a perforated base plate opposite the open end, disposed in at least one end of the tubular assembly.

47. The vertebral implant device of claim 46 wherein the graft containment device is removable.

48. The vertebral implant device of claim 46 wherein the expandable tubular assembly includes an endplate surface adapted to engage one of the vertebral endplates is expandable.

49. The vertebral implant device of claim 46 further comprising windows through the sidewall to permit the placement of graft material into the tubular assembly.

50. The vertebral implant device of claim 46 wherein the graft containment device opens toward the adjacent vertebral endplate.

51. The vertebral implant device of claim 46 wherein the graft containment device extends less than half the length of the side wall.

52. The vertebral implant device of claim 46 wherein the sidewall comprises a plurality of apertures extending over more than half of the sidewall.

53. The vertebral implant device of claim 46 wherein the graft containment device comprises a resorbable material.

54-61. (Cancelled)

62. The vertebral replacement implant according to claim 24 wherein the base of the basket comprises apertures.

63. The vertebral replacement implant according to claim 24 wherein the tubular wall is tapered.

64. (Canceled)

65. A vertebral implant adapted to extend between a pair of vertebrae in a spinal column vertebral endplates, the vertebral implant comprising:

a first tubular implant member having a longitudinal axis extending substantially parallel to the spinal column;

a first endplate member connected to the first tubular implant member, the first endplate member comprising a through bore; and

a tubular receptacle member sized to extend into the through bore, the tubular receptacle member bounded at one end by a perforated base to form a cavity adapted to receive graft material.

66. The vertebral implant of claim 65 further comprising:

a second tubular implant member and

a connector engaged between the first and second tubular members.

67. The vertebral implant of claim 65 wherein the tubular receptacle member is threadedly engaged with the first endplate member.

EVIDENCE APPENDIX

There is no evidence regarding the above-identified patent application.

RELATED PROCEEDINGS APPENDIX

There is no related proceeding regarding the above-identified patent application.